Exhibit 1
(part 2)

Based on the testimony of Mr. Whorton, the Commission finds that the record clearly supports the prudency and reasonableness of the selection of the Jenkinsville site as the location for Units 2 and 3.

2. The Selection of AP1000 Technology

The record shows that SCE&G selected AP1000 technology based on a comparative evaluation of the three leading nuclear reactor designs that are commercially available today. These three designs represent all but a small number of the nuclear generating units under consideration for siting in the United States at this time. (Tr. III, p. 562, l. 3 – p. 563, l. 5.) In 2005, SCE&G asked each of the three vendors of these designs to submit written responses to more than 400 technical and financial questions concerning its unit. SCE&G then used objective weighing criteria to evaluate and compare their responses. The evaluation of the technical and financial responses was made independently by separate groups within the Company. (Tr. III, p. 564, l. 6 – 12.) AP1000 technology was selected as preferable by both groups of evaluators. (Tr. III, p. 564, l. 4 – 8.)

In late 2006, SCE&G began a reevaluation of these vendors based on updated information concerning the status and pricing of their designs. The reevaluation was completed in March of 2007. SCE&G's financial evaluation of these competing designs showed that the AP1000 unit was competitive with or preferable to the two alternative designs from both a pure cost per megawatt basis and from a size, design, operational, and engineering perspective. (Tr. III, p. 564, l. 14 – 565, l. 1 - 3.)

From the perspective of size, the AP1000 unit at 1,117 MW allows SCE&G to site two units at the Jenkinsville site. (Tr. III, p. 566, l. 12 – 13.) The competing vendors' units are 1,550 MW and 1,600 MW in size. For transmission and other reasons, SCE&G determined that it would not be practical and cost effective to site two units of such larger size on the site. The selection of AP1000 units, however, allows a total of 2,234 MW of new generation capacity to be sited at Jenkinsville, which results in better utilization of that site and its existing infrastructure. (Tr. III, p. 566, l. 18 – 21.)

In addition, a single unit would have a single completion date, while constructing two 1,117 MW units gives SCE&G the ability to bring new capacity on line in two installments separated by approximately three years. Phasing the additional capacity allows the capacity additions to be more precisely timed to demand growth on the system. In addition, two 1,117 MW units are preferable from an operational standpoint to a single larger unit because two units allow more flexibility in outage scheduling and result in less power lost to the system if a unit trips off, thereby enhancing system reliability. (Tr. III, p. 566, l. 12 – 18.)

As to design suitability, the AP1000 unit was the only one of the three units evaluated that is a pressurized water reactor with passive safety features. The other units were either pressurized water units or passive safety units, but not both.

The pressurized water design was important to SCE&G because that is the type of unit SCE&G currently operates very successfully as Unit 1. Units 2 and 3 will share many of the same components, design features, and operating characteristics as Unit 1. These similarities will make staffing, training, operating and maintaining the Units much

simpler than if a different technology had been selected. (Tr. III, p. 572, l. 5 - 10; Tr. III, p. 567, l. 3 – 7.)

Passive safety design is also important because it dramatically reduces the amount of safety related equipment – including values, pumps and piping – that is included in the plant's design. Less safety related equipment greatly simplifies operation and maintenance of the Units and NRC regulatory compliance issues. None of the competing units had both features. (Tr. III, p. 572, l. 5 – 22.)

The Company also selected the AP1000 unit because at the time of selection it was the only one of the competing units that was fully design-certified by the NRC. The AP1000's nuclear safety systems received NRC staff approval in 2004, and full NRC design certification was granted thereafter. Furthermore, the AP1000 design is a similar but enhanced version of the AP600 design which the NRC design-certified in 1999. (Tr. III, p. 555, l. 10 – 11; Hearing Exhibit 2, SAB-1, p. 3.)

While no party testified in support of an alternative reactor technology, Ms. Brockway on behalf of FOE stated her concern that the Company places itself and its customers at great risk by using the "as-yet-unfinished AP1000 design." (Tr. III, p. 430, l. 4-8.) SCE&G President Marsh refuted this argument by stating that the plant has been certified by the NRC and that the pending revisions are enhancements to the existing design. (Tr. III, p. 334, l. 17-19.) Company witness Byrnes testified that Revisions 1-15 have been approved by the NRC and that he sees no problems with obtaining the approvals of the later revisions in time to meet the construction schedule in the EPC Contract (Tr. III, p. 635, l. 7-10.) ORS witness Dr. Jacobs also testified that the design is

finalized to the point that the probabilistic risk assessment (PRA) can be calculated, which is a condition precedent to design certification. (Tr. VIII, p. 2181, l. 19-22)

Finally, the AP1000 presents superior opportunities for collaboration among Southeastern utilities. At the time of the hearing, fourteen AP1000 units were being proposed for construction by six separate utilities in the Southeast. This number of AP1000 units increases the opportunity for cost and experience sharing among these utilities, both during construction and operation of the Units. The record shows that utilities are cooperating extensively in this regard. The fact that SCE&G's units will be among the first of the fourteen such units to be built in the region means that Westinghouse and Stone & Webster will have every incentive to complete these initial units efficiently and on schedule, and that vendors will be eager to be selected and retained as part of the supply chain for this extensive series of plants. The fact that so many other utilities have selected the AP1000 unit is further evidence of the strength of the design and competitiveness against alternative resources. (Tr. III, p. 570, l. 13 – p. 571, l. 5; Tr. III, p. 573, l. 3 – 17.)

The ORS has audited the Company's decision to select AP1000 units for construction at the Jenkinsville site. (*See generally,* Tr. VIII, p. 2020 – 2026.) ORS's independent expert witnesses testified without reservation in support of the reasonableness and prudence of this selection. (Tr. VIII, p. 2025, l. 15 – 23.) The Company and ORS have provided the Commission with an extensive and thorough record in regards to the appropriateness of this technology and the reasonableness of the

selection process. After review of that record, the Commission finds that SCE&G's selection of the AP1000 units as Units 2 and 3 was prudent and reasonable.

3. The Qualification and Selection of Principal Contractors and Suppliers

The Base Load Review Act requires the Commission to make a finding concerning the prudence and reasonableness of the selection of the principal contractors and suppliers for the construction of the plant, as well as their qualifications to perform the work. S.C. Code § 58-33-270(B) (5). Units 2 and 3 will be built by Westinghouse Electric Co., LLC, as the principal nuclear systems supplier, and Stone & Webster, Inc. as the principal contractor. These two companies have formed a consortium that is the signatory for the EPC Contract to build the plant. In addition, the EPC Contract between the Company and Westinghouse/Stone & Webster provides a list of qualified suppliers approved by the Company from which Westinghouse/Stone & Webster can select the principal contractors and suppliers for this project. (Tr. III, p. 579, p. 5 – 10; p. 585, l. 18 – 22; Hearing Exhibit 2, SAB-4, p. 3 – 10.)

a. Westinghouse/Stone & Webster

The record shows that the selection of Westinghouse and Stone & Webster to construct Units 2 and 3 is reasonable and prudent and that they are well qualified for the work. Westinghouse is recognized worldwide as a major supplier of nuclear technology and has been involved in nuclear power technology since the inception of the industry. (Tr. VIII, p. 2029, l. 11 – 14.) In the 1950s, Westinghouse built both the first military and the first commercial nuclear power plants. (Tr. VIII, p. 2027, l. 7 – 18.) Westinghouse has been involved with the Company and the V.C. Summer site for over

forty-four years. It designed the Parr demonstration nuclear plant which was constructed adjacent to the V.C. Summer site in the early 1960s. (Tr. VIII, p. 2028, l. 22 – p. 2029, l. 1.) Westinghouse also designed and built Unit 1, which went into commercial operation in January 1984. (Tr. VIII, p. 2029, l. 1 – 2.)

Currently, almost 60% of the United States' operating reactors are based on Westinghouse designs. (Tr. VIII, p. 2028, l. 2 – 3.) Westinghouse has also provided the design basis for almost 50% of the world's operating commercial nuclear power plants. (Tr. VIII, p. 2027, l. 11 – 13.) As mentioned above, the Westinghouse AP1000 design has been selected for 14 new nuclear units proposed to be built in the United States at this time. Westinghouse is clearly poised to continue to maintain a strong position in the industry and is fully qualified to be the supplier of nuclear systems to this project.

The construction contractor, Stone & Webster, is a 110-year old company that has been involved with design, construction and maintenance of nuclear power plants since 1957. It is currently a wholly owned subsidiary of The Shaw Group (Tr. VIII, p. 2029, l. 5 – 14.) Stone & Webster has recently been employed in the construction of a mixed-oxide fuel (MOx) facility at the Savannah River site and in the completion of construction of TVA's Brown's Ferry Plant. (Tr. III, p. 583, l. 19 – p. 584, l. 1.) Both Westinghouse and Stone & Webster are currently involved in construction of AP1000 reactors in China, two in Sanmen, China and two more in Haiyang, Shandong Province, China. (Tr. VIII, p. 2028, l. 13 – 15.) Westinghouse/Stone & Webster consortium has been contracted by the Southern Company to construct two new AP1000 units at Plant

Vogtle in Georgia, and is in contract negotiations with Duke Power, Progress Energy and TVA for the construction of multiple units on their behalf.

One of the key considerations regarding a nuclear supplier is the strength of the corporate quality assurance program that will be employed to meet applicable NRC requirements and to ensure that the plant can be built and operated in a reliable and dependable manner. (Tr. III, p. 583, l. 5 – p. 584, l. 5.) Westinghouse has a long-standing relationship with SCE&G involving maintenance and improvements to its existing nuclear and fossil facilities. SCE&G's witnesses testified to their familiarity and experience with the Westinghouse quality assurance program and their review and evaluation of the comparable program run by Stone & Webster. The Company's witnesses testified that these quality assurance programs are fully adequate to protect the Company's interests in the quality of the equipment, components and construction of Units 2 and 3. (Tr. III, p. 584, l. 3 - 5.)

Based upon the foregoing, the Commission finds that the selection of Westinghouse/Stone & Webster as the suppliers and contractors for Units 2 and 3 is reasonable and prudent.

b. Other Vendors

The EPC Contract between SCE&G and the Westinghouse/Stone & Webster consortium requires all subcontractors and suppliers be selected from a list of prescreened/preapproved vendors. (Hearing Exhibit 2, SAB-4, p. 1 - 2.) All suppliers performing nuclear safety related work will be required to comply with the consortium's quality assurance program. (Hearing Exhibit 2, SAB-4, p. 1.) The consortium's Project

Quality Assurance Program is an exhaustive process of evaluation and approval of all suppliers of safety-related products and services. The suppliers, including those that carry the ASME nuclear accreditation, are evaluated annually and audited every three years, including suppliers that carry the ASME nuclear certification. (Tr. VIII, p. 1901, l. 11 – 14.) The criteria to qualify potential suppliers for use in supplying components for the AP1000 under the quality assurance program include: the supplier being listed on the consortium's qualified suppliers list, the supplier having a standing relationship with the consortium for the supply of the specific type of component, and the supplier having a proven track record of successfully supplying quality components to the nuclear industry. (Hearing Exhibit 2, SAB-4, p. 1.) Once a vendor satisfies these criteria, the consortium conducts an on-site audit to perform an assessment of the potential supplier's facilities, capabilities, and programs. (Hearing Exhibit 2, SAB-4, p. 1.) All qualified suppliers are thereafter evaluated annually and audited, except under special circumstances, every three years. (Hearing Exhibit 2, SAB-4, p. 1.) A list of potential suppliers and vendors for the Units 2 and 3 was included as Exhibit P to the EPC.

In addition to the consortium's review and audit processes, SCE&G has evaluated the suppliers and subcontractors identified in Exhibit P to the EPC and the consortium's quality assurance programs under which they will operate. (Tr. III, p. 587, l. 8 – 11; Hearing Exhibit 2, SAB-3, p. 1.) Many of these subcontractors and vendors have been known by the Company for decades and have worked with the Company successfully in operating Unit 1 and other electric generating stations. (Tr. III, p. 587, l. 11 – 15.)

In addition, SCE&G has contracted with the Bechtel Corporation to serve as the lead contractor in preparing the site-specific Combined Construction and Operating License Application ("COLA") for Units 2 and 3 and in assisting SCE&G in obtaining the required license from the NRC. As Company witness Byrne testified, Bechtel is one of the most experienced and well-recognized firms internationally in power systems construction, engineering and consulting services. (Tr. III, p. 604, l. 9 – 11.) SCE&G has extensive knowledge of Bechtel Corporation both from past projects and from Bechtel's standing and involvement in the nuclear power industry. (Tr. III, p. 604, l. 11 – 14.) According to Mr. Byrne, the NRC has already completed its sufficiency review of the COLA prepared by Bechtel for Units 2 and 3 and has declared the COLA sufficient and available for review and comment. Mr. Byrne testified that SCE&G has been fully satisfied by the thoroughness, professionalism and competency of the work that Bechtel and its subcontractors have done to date and that Bechtel is capable of seeing the application through to its conclusion. (Tr. III, p. 604, l. 14 – 17.) The Commission finds that Bechtel and its subcontractors are well qualified to assist the Company in obtaining a license for the new Units.

Based on the foregoing, the Commission finds that the contractors and vendors, including those provided for in the EPC and otherwise, are competent and reliable to perform as subcontractors and vendors to the project and that their selection and qualifications were reasonable and prudent and fully satisfies the requirements of the Base Load Review Act.

4. The Terms of the EPC Contract

A key component of the prudency review envisioned by the Base Load Review Act is a review of the reasonableness and prudence of the contract under which the new units will be built. Units 2 and 3 will be constructed pursuant to the terms of an EPC Contract which SCE&G negotiated with Westinghouse/Stone & Webster over a two and a half-year period. Under that contract, SCE&G is responsible for providing the construction site and specified construction utilities and for obtaining permits and licenses needed to build and operate the Units. (Tr. III, p. 580, l. 12 – 14.) Westinghouse/Stone & Webster is responsible for other aspects of designing, engineering and constructing the Units. (Tr. III, p. 579, l. 13 – 16; Tr. III, p. 579, l. 21 – p. 580, l. 3.) Both a confidential and non-confidential version of the EPC Contract have been filed in the record of this proceeding as Exhibit C to Mr. Byrne's testimony. (Hearing Exhibit 2, SAB-3.)

a. Pricing Terms

The pricing under the EPC Contract divides the Westinghouse/Stone & Webster charges into seven specific categories. Each of those categories has distinct pricing terms that apply to those aspects of the work that fall within them.

- The Fixed with No Adjustment category includes some major plant components necessary to construct the Units. The price for these items is fixed in absolute dollars and no inflation adjustment or escalation rate applies to them. (Tr. III, p. 589, l. 5 - 11.)

- The Firm with Fixed Adjustment A category includes other items of major equipment for the plant. The price for this equipment is fixed in 2007 dollars. That price is subject to escalation based on a specified annual percentage rate that is established in the contract. (Tr. III, p. 589, l. 12 – 20.)
- The Firm with Fixed Adjustment B category includes specialized nuclear-specific labor, systems and material charges that will be incurred by Westinghouse Electric Corporation directly in designing and constructing the Units. The price for this work is fixed in 2007 dollars and is subject to escalation based on a specified annual percentage rate that is slightly higher than the rate for Firm with Fixed Adjustment A category. (Tr. III, p. 589, l. 21 – p.590, l. 9.)
- The Actual Craft Wages category includes all site craft labor, which is skilled construction labor such as welders, pipe fitters, riggers, and concrete finishers. These labor costs are charged at Westinghouse/Stone & Webster's actual cost at the time they are incurred. (Tr. III, p. 590, l. 19 – 21.)
- The Non-Labor Target category includes costs of construction material and supplies as well as the cost of ancillary buildings such as warehouses. These costs are charged based on Westinghouse/Stone & Webster's actual cost at the time they are incurred. (Tr. III, p. 591, l. 1 – 5.)

- The Time and Materials category includes charges for the time and materials supplied by Westinghouse/Stone & Webster in support of SCE&G's obtaining required licenses and permits for the Units, and testing and start-up of the Units. These costs are charged based on Westinghouse/Stone & Webster's actual cost at the time they are incurred. No escalation rate is specified in the EPC Contract. (Tr. III, p. 591, l. 6 – 10.)
- The Firm with Indexed Adjustment category includes all items not included in other categories. Specifically, it includes such things as non-craft labor and ancillary costs of the construction project such as insurance. For charges that fall within this cost category, the underlying price in 2007 dollars is fixed, but the price is subject to escalation based on the Handy-Whitman All Steam South Atlantic Region escalator as it is updated year to year. (TR. III, p. 590, l. 10 – 18.)

Of these seven price categories, four are categories for which prices are fixed in absolute dollars, or are quoted in firm 2007 dollars with a stated escalation rate or specified inflation index. In these "fixed and firm" categories, SCE&G remains at risk for scope additions and change orders. Otherwise, substantially all of the non-inflation price risk is assumed by Westinghouse/Stone & Webster. (Hearing Exhibit 2, SAB-3, p. 3.)

The Target Price categories include Actual Craft Wages and Non-Labor Target. The EPC Contract sets a Target Price for these cost categories in 2007 dollars subject only to indexed inflation and to scope changes and change orders. If Westinghouse/Stone & Webster exceeds the Price Target, then it is at risk for a contractually determined portion of its profits on the excess work. (Tr. II, p. 179, l. 3 – 6.) If the work comes in under the Target Price, then Westinghouse/Stone & Webster are allowed to keep a majority of the savings. (Tr. II, p. 179, l. 6 – 8.) This combination of potential incentives and penalties provides Westinghouse/Stone & Webster with a strong motivation to complete the project at or below the Target Price.

The Time and Materials category is the only EPC cost category that is outside both the fixed and firm category and the target price category. It represents the cost of assistance that Westinghouse/Stone & Webster will provide to SCE&G in licensing, permitting and testing the Units and is a small component of the total price. (Tr.III, p. 592, l. 18 – p. 594, l. 11.)

A number of intervenors have raised questions concerning the degree of price certainty provided by the EPC Contract. SCE&G Witnesses Byrne and Marsh testified that in the EPC Contract negotiations, the Company sought to obtain the greatest degree of price assurance possible, with due consideration to the cost that Westinghouse/Stone & Webster's would charge for accepting additional price risk. (Tr. II, p. 178, l. 15 – p. 179, l. 9.) A review of the EPC Contract's pricing terms indicates that in excess of 50% of the total EPC price falls into fixed or firm categories. (Tr. III, p. 592, l. 5 – 7.) More specifically, these fixed and firm categories contain the major equipment and components

that are to be used in the Units, and the majority of nuclear-specific engineering and other services that will be provided by Westinghouse as the nuclear systems provider. (Tr. VIII, p. 2032, l. 1 – p. 2033, l. 5.) Westinghouse/Stone & Webster was able to provide fixed or firm pricing not only on the majority of the total price, but also on the majority of those elements of the equipment and services that were most uniquely nuclear in nature, and so subject to potential price risks that are unique as compared to more standard construction cost items. The Target Pricing provisions, quoted above, provide additional incentives to hold prices on other parts of the contract to anticipated levels. For these reasons, the Commission finds that the EPC Contract contains reasonable and prudent pricing provisions, as well as reasonable assurances of price certainty for a project of this scope.

b. Quality Assurance Terms

An important set of provisions in the EPC Contract are the terms related to ongoing quality control and quality assurance during the course of the project. The EPC Contract requires timely financial and status reporting by Westinghouse/Stone & Webster during the course of the project. SCE&G has the right to inspect all work, including fabrication conducted off-site by Westinghouse/Stone & Webster and in suppliers' and vendors' facilities. (Tr. VIII, p. 1901, l. 22 – p. 1902, l. 3.) SCE&G has the right to block any new vendors from being added to this list that do not meet its approval. (Tr. III, p. 586, l. 4 – 7.)

SCE&G has clear contractually-defined rights to access and inspect contractors' and subcontractors' facilities and to audit their quality assurance programs and

manufacturing techniques. (Tr. III, p. 586, l. 13 – 18.) The EPC Contract has specified witness points and hold points at which SCE&G personnel have the right to be present when certain key manufacturing processes take place, and to inspect the quality of partially completed equipment and components at designated stages of their production. (Tr. III, p. 586, l. 18 – 21.) SCE&G may designate additional witness and hold points at its expense. (Hearing Exhibit 2, SAB-3.) SCE&G has tbe right to reject work, equipment and components, the right to issue "stop work" orders to allow time to resolve questions concerning quality deficiencies, and the right to require contractors or subcontractors to change manufacturing processes to correct quality deficiencies. (Tr. VIII, p. 1902, l. 20 – 23.) The EPC includes detailed requirements for subcontractor quality assurance, reporting of defects and noncompliance to SCE&G and Westinghouse/Stone & Webster, quality control and inspection activities by SCE&G and Westinghouse/Stone & Webster to ensure performance, access and auditing of quality control by SCE&G at Westinghouse/Stone & Webster facilities and subcontractor facilities. (Tr. III, p. 586, l. 13 – 18.; Tr. VIII, p. 1902, l. 18 – 20.)

The record shows that the EPC Contract contains provisions that are reasonable and prudent and allow SCE&G to protect its interest and the interests of its customers in the quality of the work done to construct Units 2 and 3. The Commission points out that regardless of tbe terms of the EPC contract, SCE&G has the ultimate responsibility for the proper execution of the EPC contract and the construction of the units, including appropriate quality control and quality assurance.

c. Other Provisions of the EPC Contract

The EPC Contract sets definitive substantial completion deadlines for Units 2 and 3 of April 1, 2016 and January 1, 2019 respectively. Westinghouse/Stone & Webster must pay liquidated damages in material amounts if completion is delayed. (Tr. III, p. 598, l. 10 – 16.)

As to warranties, the EPC Contract contains warranties on materials, work and equipment which begin to run from substantial completion of each Unit or from the date that the equipment or component is placed into service if SCE&G places it into service before substantial completion of the Unit. (Tr. III, p. 599, l. 15 – p, 600, l. 9; Hearing Exhibit 2, SAB 3.) The EPC Contract contains provisions for SCE&G to purchase extended warranties on equipment at prices to be offered by Westinghouse/Stone & Webster. (Tr. III, p. 600, l. 6 – 9.) The EPC Contract contains clear capacity targets for Units 2 and 3, with liquidated damages if they are not met, and bonus payments if the plants demonstrate that they can reliably generate more power than specified in the EPC Contract. (Tr. III, p. 598, l. 10 – 16; Tr. III, p. 599, l. 1 – 6.) The EPC Contract contains clear processes and procedures for measuring compliance of the Units with capacity targets and guarantees. (Tr. III, p. 598, l. 20 – p. 599, l. 6; Tr. III, p. 599, l. 17 – p. 600, l. 9.)

As to change orders, the EPC Contract contains clear definitions of the sorts of conditions that entitle the contractors to change orders and associated price adjustments. Tr. III, p. 594, l. 17 – p. 595, l. 1.) These provisions are contained in Article 9 of the EPC Contract. These provisions specify in detail the sort of information required to be

submitted with a change order, the requirement for review and agreement by Westinghouse/Stone & Webster and SCE&G to change orders, the payment and schedule impacts of change orders and the handling of disputes as to change orders. (Tr. III, p. 595, l. 3 – 8.) Mr. Byrne testified that these change order provisions are reasonable and reflect standard practice in the industry and provide appropriate protection for SCE&G and its customers. (Tr. III, p. 595, l. 9 - 10.)

The EPC Contract contains guarantee provisions under which the parents of both Westinghouse (Toshiba, Corp.) and Stone & Webster (The Shaw Group) agree to stand behind the obligations of their subsidiaries up to certain defined amounts. (Hearing Exhibit 2, SAB-3.) It includes rights for SCE&G to terminate work under the contract during the construction process. (Tr. III, p. 669, l. 7 – 17.) In addition, it addresses such matters as Insurance; Limitation of Liability; Liens; Proprietary Data; Intellectual Property; Environmental Controls and Hazardous Materials; Title and Risk of Loss; Suspension and Termination of Work; Safety - Incident Reporting; Qualifications and Protection of Assigned Personnel (including provisions for fitness for duty and security screening; training to environmental, OSHA, NRC and other applicable Laws, NRC Whistleblower Provision and respirator protection); Records and Audits; Taxes; Dispute Resolution; Notices; Assignment; Waiver; Modification; Survival; Transfer; Governing Law - Waiver of Jury Trial - Certain Federal Laws; Relationship of Owner (SCE&G) and Contraetor (Westinghouse/Stone & Webster); Third Party Beneficiaries; Representations and Warranties; and Miscellaneous Provisions. (Tr. III, p. 600 l. 12 – p. 601, l. 5.)

ORS experts conducted an extensive review of the EPC Contract and testified, as did Mr. Byrne, that its terms are reasonable and appropriate, consistent with industry standards, and reasonably protect SCE&G's and its customers' interests. (Tr. VIII, p. 1898, l. 6 – 20.) The evidence of record supports the conclusion that the terms of the EPC Contract are reasonable and prudent.

However, in any event, regardless of the terms of the EPC Contract, SCE&G has the ultimate responsibility for the proper execution of that contract and the construction of the Units, including appropriate quality control and quality assurance.

5. The Price of Units 2 and 3

The Combined Application, at Exhibit F, set out the estimated cost of Units 2 and 3 as $6,313,376,000 in escalated dollars. (Hearing Exhibit 16, EEB-1.) Of this amount, $1,514,340,000 represents escalations and inflation resulting in an unescalated cost of $4,799,036,000. (Hearing Exhibit 37.) Included in that amount is $264,289,000 of capitalized interest in the form of AFUDC. (Hearing Exhibit 16, EEB-1.) Accordingly, the estimated construction cost of the project in 2007 dollars is $4,534,747,000 (or $3,693 per KW), net of AFUDC.

The amount of $4,534,747,000, is the cost of Units 2 and 3 without AFUDC in 2007 dollars and is the capital cost which SCE&G asks this Commission to approve under the terms of the Base Load Review Act. (AFUDC and inflation will be calculated as set forth in this Order and added to it as the project proceeds.) The $4,534,747,000 is also the cost beyond which SCE&G must obtain Commission approval of a change in the project in order to remain eligible for revised rates under the Base Load Review Act.

Company witness Byrne testified that this cost was the result of intense negotiations which resulted in substantial price concessions from Westinghouse/Stone & Webster related to their interest in closing initial contracts to ensure that their technology led in the revitalization of the nuclear industry in the United States. (Tr. III, p. 633, l. 12 – p. 634, l. 1.) ORS Witness Crisp, who has international experience in power plant negotiations, testified that SCE&G was the clear winner in the EPC Contract negotiations and that the resulting price for Units 2 and 3 is quite reasonable. (Tr. VIII, p. 1954, l. 14 – 18.) No party has taken the position that this price is unreasonably high for the price for new nuclear capacity. (Hearing Exhibit 37; Tr. III, p. 575, l. 15 – 22.)

Instead, FOE argued that this price is unrealistically low. However, as discussed above, there is nothing in the EPC Contract or the cost schedules and estimates based on it to support the argument that SCE&G has underestimated the foreseeable cost of the Units. There are no terms or provisions in the EPC Contract or elsewhere that support the assertion made at the hearing that "bait and switch" pricing underlies the price presented in the Combined Application. The $4,534,747,000 price includes all major aspects of plant construction and licensing, reasonable estimates of owner's cost, including licensing and permitting costs and project oversight, reasonable estimates of the costs of transmission upgrades associated with the Units, and reasonable amounts of additional project contingencies in addition to those already included in the underlying price bids and estimates. (Hearing Exhibit 2, SAB-3.) Given the contractual commitments, inflation assumptions and contingencies that this price includes, the Company's price estimate constitutes an estimate of the price of the Units that is

reasonable and prudent and provides an appropriate basis for approved capital costs to be established in the requested base load review order.

6. The Company's Plan for Financing Units 2 and 3

Certain of the intervenors have raised questions about whether SCE&G can successfully finance the construction of Units 2 and 3. The concerns raised relate to a) the specificity of SCE&G's financing plan as presented in this proceeding, b) the overall ability of SCE&G to finance the project, and c) the ability of SCE&G to finance the project in the context of the liquidity and financial crisis that the nation is experiencing at this time.

a. The Reasonableness and Practicality of SCE&G's Financing Plan

The record shows that SCE&G will finance the immediate cash needs of its construction program using short-term borrowing. (Tr. IV, p. 932, l. 11 – 12.) Later, as short term debt reaches a sufficient amount, the Company will replace the short-term debt with medium to long term debt. (Tr. IV, p. 932, l. 14 – 16.) The timing, size, and terms of these medium-term to long-term debt issuances will depend on market conditions at those times and the cash needs of the project as they develop. As to capital structure, Mr. Addison testified that the Company will monitor its equity to capital ratios, and plans to issue equity sufficient to finance the nuclear investment on a 50-50 debt/equity basis over time. (Tr. IV, p. 932, l. 21 – p. 933, l. 1.) The timing and amount of these future equity issuances will also depend on future market conditions. (Tr. IV, p. 933, l. 1 – 3.)

As Company witness Addison testified, this approach is in keeping with the Company's standard practice when investing in major capital projects on its system. As

is typically the case, the timing and amount of future debt and equity issuances cannot be predicted with specificity. (Tr. IV, p. 932, l. 11 – 20.)

SCE&G will use revised rates under the provisions of the Base Load Review Act to generate funds to pay debt service on the newly issued debt, and to provide earnings to support the newly issued equity. (Tr. IV, p. 917, l. 14 – 19.) These revised rate filings will allow the Company to obtain a timely recovery of the cost of capital associated with its ongoing investment in the construction of the new units as that construction proceeds. In the Combined Application and the exhibits to the testimony of Company witness Best, the Company has provided a detailed schedule of the revenue requirements to support its investment in the new units year to year. It has also provided the projected rate adjustments year by year to support this investment. The anticipated rate adjustments will be made through revised rate filings under the Base Load Review Act. As Company witness Addison testified, these adjustments are self-calibrating and will reflect the current cost of debt, the current capital structure and the current amount of capital investment in the Units at the time of each revised rates proceeding. They will reflect a return on equity that is set at a rate, 11%, that is sufficient in current conditions, but can change if the Commission sets a different return in a future rate proceeding. The rate adjustments needed to support the construction of the Units will be spread over the period between 2009 and 2019. In no year is any projected increase related to the investment in the Units anticipated to exceed 4%. (Tr. IV, p. 924, l. 12 – 21.)

Based on the evidence on the record in this proceeding, the Commission finds that the financial plan set out here is reasonable, prudent and practical.

In addition, as Mr. Addison testified, this plan has been presented to the investment community, including rating agency personnel, investment analysts, institutional investors, and hedge-fund investors. They have been supportive of the plan and the Company's ability to raise capital under it, assuming a positive outcome to these proceedings. Their support is indicated in the strong investment grade debt ratings that have been affirmed for SCE&G's debt, and in the reasonable stock prices that the Company has maintained even in the face of current conditions. The evidence on the record clearly supports the Company's ability to finance the construction of Units 2 and 3 using its current financing plan and the mechanisms provided by the Base Load Review Act. (Tr. IV, p. 943, l. 5 – p. 944, l. 2.)

b. The Level of Detail Presented in the Plan

Certain of the intervenors challenged the level of detail presented concerning the Company's financial plan. The testimony on the record of this case, however, shows that the scope and detail of the financial plan as presented here is not in any way deficient for purposes of this proceeding. As Mr. Addison testified, the plan presented here is the same plan that has been presented to the rating agencies, to investment analysts and to investors. The plan does not contain details concerning the size and dates of future debt and equity issues, because those details depend on the timing of future cash needs, and the nature of future market conditions which cannot be known at this time. (Tr. IV, p. 931, l. 13 – 15.) Instead, under the Company's plan, the timing, size and terms of future debt and equity issuances remain flexible. The record shows that the scope and detail provided concerning this plan is sufficient to allow the Commission to evaluate the

reasonableness and prudence of the decision to build Units 2 and 3, and to determine that the plan is both practical and realistic. (See generally, Tr. IV, p. 951 – 955.)

c. SCE&G's Ability to Execute the Plan in Current Markets

FOE and other intervenors challenge the reasonableness and prudence of the Company's decision to proceed with the construction of Units 2 and 3 in the face of current economic conditions. For instance, FOE's witness Brockway questioned whether the Company will be able to raise the required funds given the recent liquidity crisis and the tight financial markets that have resulted.

The record shows, however, that the Company has been able to maintain access to capital even during the height of the liquidity crisis. The Company's CFO, Mr. Addison, testified concerning the Company's experience during this period. He testified that during the last week of September 2008, which was at the height of the liquidity crisis, SCE&G went to the market for $250 million in 10-year first mortgage bonds to fund its operations, including ongoing investments in Units 2 and 3, and to increase its cash reserves. (Tr. IV, p. 928, l. 17 - 19.) In all, the Company received formal expressions of interest in these bonds that totaled $1.3 billion. (Tr. IV, p. 928, l. 22 – p. 929, l. 1.) In light of this market response, SCE&G increased the size of the ultimate issue to $300 million and tightened the coupon interest rate on the bonds from 6⅞ percent interest to 6½ percent. (Tr. IV, p. 928, l. 17 – p. 929, l. 3; Tr. IV, p. 950, l. 19 – 20.) The bond issue was successfully closed during the first week in October and, according to Mr. Addison, the Company has continued to receive unsolicited inquiries from large investors wanting to acquire more SCE&G bonds. (Tr. IV, p. 928, l. 17 – p. 929, l. 11.)

At the same time, the Company has continued to maintain a stock price that supports its access to additional equity capital on reasonable terms. (Tr. IV, p. 928, l. 10 – 15.) As to debt ratings, Moody's affirmed a strong, investment grade rating for SCE&G in November, 2008. (Tr. VI, p. 1241, p. 7 - 21.) The rating agency specifically recognized SCE&G's ability to access capital bond markets under current market conditions as evidence of investors' "flight to quality and perceived comfort in lower risks associated with rate-regulated business activities." (Tr. VI, p. 1242, l. 4 – 12.)

As Mr. Addison points out, in times of economic uncertainty, the market tends to favor stable and predictable companies like SCE&G as "safe harbors" for capital. (Tr. IV, p. 929, l. 14 – 21.) The record supports the fact that SCE&G does maintain reasonable access to capital in spite of the recent economic downturn. Current conditions have not made it impossible or unduly difficult for SCE&G to finance the construction of Units 2 and 3. (Tr. IV, p. 951, l. 13 – 15.)

FOE states in its Brief that, as recently as the end of September 2008, Fitch's ratings gave the Company a "Negative Outlook," due to "substantial financial commitment of its plan to construct two nuclear generating units for service in 2016 and 2019, respectively as well as the construction risk and uncertainties associated with a project of this size and complexity." FOE Brief at 45. However, as SCE&G witness Addison pointed out, Fitch had stated in an August 4, 2008 press release: "Ultimately, the rating impact will depend on management's financing plan, its ability to control construction costs, the regulatory treatment of investment expenditures and capital market access." (Tr.IV, pp. 912, l. 24-913, l. 2) Addison noted that the Company

addressed the cost-related risk through the Firm/Fixed price elements of the EPC Contract and other measures. The Company has stated it has access to capital. Through this Order, the Commission has resolved the regulatory question. Addison opined that neither the drop in short term rating by Fitch, nor the 2007 downgrade of SCE&G's credit rating put into doubt the Company's ability to finance the new units successfully. (Tr. IV, p. 914, l. 12-14.) Fitch downgraded the short-term debt of SCANA and its subsidiaries, but affirmed its Single A– rating for SCE&G as an issuer and an A+ rating for SCE&G's senior secured debt. The rating changes do not cast doubt on the ability of the Company to issue long term debt on reasonable terms on a going forward basis. (Id.) SCE&G currently maintains a strong investment grade rating that has been affirmed by two rating agencies after a comprehensive review of the Company's plans for building and financing VCSNS Units 2 and 3. (Tr. IV, p. 914, l. 14-17.)

d. Santee Cooper as a Financial Partner

Certain of the intervenors have challenged the completeness of the record as to the role of Santee Cooper in this project. As stated above, SCE&G will own 55% of the two plants and Santee Cooper will own the remaining 45% share. (Tr. XIII, p.2918, l. 1-5.). The Commission is not required to rule on issues concerning Santee Cooper's need for the capacity it will purchase in Units 2 and 3 or the contribution to reliability and system economy those Units will make to its system. Nonetheless, evidence in the record shows that Santee Cooper and the cooperatives and municipalities it serves provide electricity to some of the fastest growing areas in South Carolina.

Certain of the intervenors have questioned whether the record in this case demonstrates Santee Cooper's ability to fulfill its financial obligations to the project. However, as the record shows, Santee Cooper is one of the largest public power utilities in the nation. (Tr. IV, p. 934, l. 7 – 9.) It has approximately $1.4 billion in annual revenue and $5.9 billion in assets. To support growth in its retail and wholesale service territory, Santee Cooper has accessed billions of dollars in capital in recent decades to build and upgrade power plants. (Tr. IV, p. 934, l. 10 – 12.) Santee Cooper's debt has been consistently rated AA by the major rating agencies. (Tr. IV, p. 934, l. 22 – p. 935, l. 1.) On October 24, 2008, Santee Cooper successfully marketed $667 million in revenue bonds in the midst of the ongoing market challenges. (Tr. IV, p. 935, l. 2 – 4.) Taken together, Santee Cooper and SCE&G provide wholesale or retail service for approximately 60% of the customers in South Carolina, have combined electric revenues of over $3.3 billion, and combined electric assets that exceed $13 billion. They have successfully partnered in building and operating Unit 1 for over 30 years. The record clearly indicates that Santee Cooper is a partner for this project that is capable of living up to its commitments to the project and of raising the capital necessary to defray its portion of the cost of constructing Units 2 and 3. Combined, Santee Cooper and SCE&G represent a capable team for this project. (Tr. IV, p. 935, 954 – 956.) There is no reason to doubt the commitment by Santee Cooper's board and leadership to participate in this project. (See generally, Tr. IV, p. 955)While the Commission does not have jurisdiction over Santee Cooper, the fact that 45% of the electricity generated by Units 2 and 3 will be

generated for the benefit of cooperative customers in South Carolina is a significant factor in its decision.

7. SCE&G's Ability to Oversee Construction of the Units

One important consideration concerning the reasonableness and prudence of the construction plan is how SCE&G intends to oversee that construction to protect its interests and the interests of its customers. The record in this proceeding contains a detailed description of resources and an approach that SCE&G will use to ensure that those interests are protected. (Tr. III, p. 617, l. 7 – p. 620, l. 7.)

a. Internal Oversight

The Commission finds that the Company will be able to manage and oversee the construction of Units 2 and 3. Company witness Byrne testified that the Company's new nuclear deployment team includes engineering, licensing, construction, quality assurance, operations, training and accounting personnel who will provide comprehensive oversight of project construction and administration of the EPC Contract. SCE&G was in the process of hiring additional individuals at the time of the hearing. (Tr. III, p. 617, l. 10 – 13.) Mr. Byrne testified that specific members of the team will be charged with oversight of each component of the construction program and EPC Contract such that SCE&G's oversight group will mirror the organizational structure of the Westinghouse/Stone & Webster team that is building the Units. (Tr. III, p. 617, l. 13 – 20.) Members of the oversight group will sit in on construction meetings, participate in inspection, testing and acceptance protocols, and review and monitor issues of cost, budget compliance and milestone progress. (Tr. III, p. 617, l. 20 – p. 618, l. 5.) All told, more than 50 SCE&G

personnel will be committed to the new nuclear deployment team. (Tr. II, p. 179, l. 15 – 17.)

This construction oversight group, reporting to SCE&G's General Manager of New Nuclear Deployment, will meet, as necessary with the Project Directors for Westinghouse/Stone & Webster to review project status and schedule and will also meet with them monthly for in-depth reviews of budget and payment issues. (Tr. III, p. 618, l. 1 – 11.) The new nuclear deployment organization will issue written reports monthly to SCE&G's Senior Vice President for Generation and Chief Nuclear Officer and will meet quarterly with the Executive Steering Committee for the Project which is comprised of the President of SCE&G and the Chief Operating Officer of Santee Cooper. (Tr. III, p. 618, l. 11 – 15.) The General Manager of the New Nuclear Deployment group also has the authority to escalate issues to this senior leadership group at any time. (Tr. III, p. 618, l. 15 – 16.)

b. Third-Party Oversight

In addition to the oversight functions discussed above, the plant construction will be subject to oversight and review by the NRC. As testified by Company witness Byrne, the level of NRC oversight and control over the site will be significant and will be comparable to what it would be for an operating nuclear power plant, although focused specifically on construction and fabrication rather than operations. (Tr. III, p. 584, l. 8 – 14.) The Company expects as many as seven NRC inspectors to be on-site full time during construction. (Tr. III, p. 584, l. 14 – 16.) According to Mr. Byrne, the number of inspectors will be staged, beginning with module fabrication on site, and additional NRC

inspection teams will be sent to the site on a regular basis to inspect specific activities such as welding, ITAACs, start-up and testing. (Tr. III, p. 584, l. 16 – 20.)

In addition, this project will be subject to regular and continuous review and oversight by the ORS pursuant to the Base Load Review Act. S.C. Code Ann. § 58-33-277. Based upon the foregoing, the Commission finds that the Company has produced sufficient evidence to show that it will be able to sufficiently monitor and manage the construction of the Units 2 and 3 at the Jenkinsville site.

8. SCE&G's Ability to Operate Units 2 and 3 Successfully

Certain of the intervenors challenged SCE&G's ability to operate Units 2 and 3 successfully when constructed. Their concerns centered on SCE&G's size as a utility and its lack of a fleet of nuclear plants. However, the record clearly indicates that SCE&G has very successfully operated Unit 1 as a single unit for decades and has compiled an excellent operating record. As Company witness Byrne testified, utilities that operate fleets of nuclear plants nationally or regionally have not performed better or established a better nuclear operating culture than SCE&G. (Tr. IV, p. 864, l. 7 – 20.) In fact, he testified that fleet utilities may be at a disadvantage in retaining and managing a skilled operating team because their operations are widely disbursed and the chain of command is longer. (Tr. IV, p. 864, l. 77 – p. 865, l. 21.) Both Company witness Byrne and ORS Witness Crisp testified concerning the strength of SCE&G's current nuclear operations and culture. (Tr. III, p. 551, l. 8 – 19; Tr. IV, p. 858, l. 20 – p. 859, l. 4.) The record shows that SCE&G has been consistently successful in operating Unit 1 as a single unit. There is nothing to indicate that SCE&G cannot also successfully operate Units 2 and 3.

9. Risks of Construction

As required by S.C. Code Ann. § 58-27-250(8), SCE&G presented a comprehensive list of the risk factors it had identified concerning the construction and operation of the Units. (*See* Hearing Exhibit 2, SAB-7.) In his testimony, Company witness Byrne discussed those risks and the steps that SCE&G is taking to mitigate their potential to adversely affect the cost of the Units or the construction schedule for them. (See generally, Tr. III, p. 615 – 617.)

The record shows that the risks of proceeding with construction of these Units include licensing and regulatory risks, which include the risk that the NRC or other licensing agencies might delay the project by delaying the issuance of necessary permits, or might change regulatory or design requirements so as to increase costs or create construction delays. Risks of the project also include the risks related to the design and engineering that remains to be done on the Units; risks of procurement, fabrication and transportation related to equipment and components for the Units; construction and quality assurance risks generally; risks related to hiring, training and retaining the personnel needed to construct and operate the Units; financial and inflation risks; and disaster and weather-related risks. (Tr. III, p. 615, l. 14 – 21.)

In ruling on whether the decision to construct Units 2 and 3 is reasonable and prudent, the Commission must evaluate the risks of constructing these units compared to the risks of meeting the energy needs of SCE&G's customers by other means. As Mr. Byrne and Mr. Marsh testified, the risks related to other alternatives include the uncertainty as to future CO_2 emissions cost; the uncertainty as to future coal and natural

gas prices and supplies; the relatively large amount of coal and gas-fired generation already included in SCE&G's generation mix; the uncertainty as to the future costs and availability of AP1000 units or other nuclear units; the loss of special federal tax incentives if construction is deferred and other factors. (Tr. III, p. 616, l. 4 – 20; Tr. II, p. 170, l. 15 – p. 172, l. 16.)

There is no risk-free means to meet the future energy needs of SCE&G's customers or of the state of South Carolina. Based on the evidence of record, the Commission finds that it is reasonable and prudent to proceed with the construction of Units 2 and 3 in light of the information available at this time and the risks of the alternatives. As the record also indicates, the Company has taken reasonable steps to identify and mitigate risk factors related to this project. The Commission has reviewed the risks of the project as mitigated by SCE&G and has determined that it is reasonable and prudent to assume these risks in light of the risks of reliance on other energy sources to meet customers' future energy needs.

10. Risk Shifting

FOE has proposed that the Commission should attempt, in its base load review order, to preclude SCE&G from seeking recovery of any additional costs that might arise due to the occurrence of specified or unspecified risks of the project. The Commission finds that this request is contrary to the language and intent of the Base Load Review Act. That Act envisions a thorough prudency review of the decision to construct the Units at this juncture. As the Act envisions, ORS and the other parties to this case have been given a full opportunity to conduct discovery and present evidence on the prudency of the

Company's decision to proceed with the construction. ORS has in fact conducted a thorough investigation of the decision to construct the Units and has employed a diverse panel of well-qualified internal and external experts to do so. For its part, the Company has presented comprehensive and candid testimony concerning its risk assessment and decision making process related to these Units.

The Commission's approval of the reasonableness and prudency of the Company's decision to proceed with construction of the Units rests on a thorough record and detailed investigation of the information known to the Company and the parties at this time. Once an order is issued, the Base Load Review Act provides that the Company may adjust the approved construction schedule and schedules of capital cost if circumstances require, so long as the adjustments are not necessitated by the imprudence of the Company. S.C. Code Ann. § 58-27-270(E). The statute does not allow the Commission to shift risks back to the Company, as Ms. Brockway suggests, nor does the Commission find any justification for doing so in the record of this proceeding. In addition, risk shifting could jeopardize investors' willingness to provide capital for the project on reasonable terms which, in turn, could result in higher costs to customers.

B. Anticipated Construction Schedules and Contingencies and Anticipated Components of Capital Cost and the Schedules for Incurring Them with Contingencies

The Base Load Review Act requires the Commission to determine "the anticipated construction schedule for the plant including contingencies [and] the anticipated components of capital costs and the anticipated schedule for incurring them, including specified contingencies." S.C. Code Ann. § 58-33-270(B)(1), (2).

1. Construction Schedule

As discussed above, Westinghouse/Stone & Webster has contractually committed to have substantially completed Unit 2 by April 1, 2016 and Unit 3 by January 1, 2019. An anticipated construction schedule, in the form of a milestone schedule leading to completion of the two Units by the substantial completion dates mentioned above, was included in the Combined Application as Exhibit E and was introduced into the evidence as Hearing Exhibit 2, SAB-5 ("Exhibit E"). As to Exhibit E, the Commission finds that the milestone schedule it contains represents an appropriate anticipated construction schedule for the plant as required by the Base Load Review Act and approves it as such. The Commission has also reviewed the detailed construction schedule comprising Exhibit E to the EPC Contract which was entered into the record as Hearing Exhibit 5. This detailed construction schedule lists thousands of individual activities and tasks. Certain interveners suggested that this document might form a suitable approved construction schedule for purpose of this order, but this schedule is too detailed and subject to too much change and amendment to serve as the approved construction schedule envisioned by S.C. Code Ann. § 58-33-270(B)(1).

2. Plant Construction Cost Forecasts

The anticipated components of capital cost for the Units are set forth on Exhibit F to the Combined Application, which was entered into the record of this proceeding as Hearing Exhibit 16, EEB-1 ("Exhibit F" – Public Version). This capital cost schedule shows the anticipated capital cost of the plant and associated transmission, by year, broken down into the seven cost categories contained in the EPC Contract, as well as

owner's cost, transmission cost, and the forecasted amount of AFUDC. This schedule also sets forth the capital cost contingency associated with the plant costs and transmission costs by year. The base dollars in the schedule are all 2007 dollars, and inflation or escalation adjustments are separately stated by year for each of the major types of cost (plant cost, transmission cost, and contingencies).

SCE&G Witness Byrne testified that the estimates of EPC and owner's costs contained in Exhibit F are reasonable and provide a reliable forecast of plant costs based on the information known to the Company at this time. The Commission accepts this testimony as credible and finds that the plant construction cost projections set forth on Exhibit F, specifically the Cumulative Project Cash Flow, provide an appropriate schedule of capital cost of Units 2 and 3 for purposes of this proceeding. (Tr. III, p. 601, l. 10 – p. 602, l. 12.) As the Base Load Review Act envisions, the Commission is approving an overall capital cost per year for the project. The anticipated schedule of construction cost for the project is the Cumulative Project Cost Flow in Exhibit F (Public Version). The more detailed cost categories set forth in Exhibit F (Confidential Version) should be updated for reporting and monitoring purposes, but are not the basis on which compliance with capital cost schedules established herein will be determined going forward.

3. Transmission Cost Forecasts

Company witness Young testified concerning the transmission upgrades that would be needed to deliver the power produced by Units 2 and 3 to customers and the cost of those upgrades. (See generally, Tr. XII, p. 2716 – p. 2729.) His testimony supports the reasonableness of those cost estimates. Id.) The Commission accepts this testimony as credible and finds that the transmission cost projections set forth on Exhibit F provide an appropriate basis for establishing the anticipated cost of transmission improvements associated with Units 2 and 3 for purposes of this proceeding.

Company witness Young further testified that SCE&G intends to reroute the new transmission line it will build to support Unit 2 to better serve growth along the Interstate 77 corridor north of Columbia. (Tr. XII, p. 2721, l. 6 – 20.) The estimated cost of the line as originally routed is 74.2% of the estimated cost of the rerouted line. (Tr. XII, p. 2722, l. 20 – p. 2723, l. 3.) In keeping with standard practice in such cases, SCE&G intends to treat 74.2% of the rerouted line as a cost of Unit 2 with the balance being considered as a routine increase in transmission system investment and not as a plant cost under the Base Load Review Act. SCE&G has asked to be allowed to adjust this percentage if such an adjustment is required due to an expansion in the scope of the line construction project in the future. (Tr. XII, p. 2723, l. 3 – 5.) The Commission finds that this request is reasonable and appropriate and grants it on the term set forth in Mr. Young's testimony.

4. The Construction Cost Contingency Pool

The Base Load Review Act requires that the Commission establish contingencies to apply to the estimate of plant capital costs approved under its terms. S.C. Code Ann. § 58-33-270(b)(2). As set forth in the testimony of Company witnesses Byrne and Best, in preparing Exhibit F, the company established a cost contingency percentage for each pricing category under the EPC Contract, as well as for owner's costs and transmission costs. These contingency percentages were determined as a matter of sound engineering judgment based on SCE&G's assessment of the potential for actual costs to be greater than the forecasted costs based on such things as the anticipated need for change orders, the potential for work delays due to weather or unanticipated conditions, the potential for delays in receiving licenses and permits, the possibility that actual inflation would exceed applicable estimates or indices, and the possibility that the estimates of the units of time and materials used to price the project might understate actual requirements. (Tr. III, p. 620, l. 13 – p. 621, l. 11; Tr. VII, p. 1634, l. 17 – p. 1635, l. 8; Exhibit 16, EEB-2, p. 4)

The Commission has reviewed these contingencies and finds that they represent a reasonable set of contingencies for use in forecasting the cost of this project under S.C. Code Ann.§ 58-33-270(B)(2). The contingency percentage applied to each cost category bears a reasonable relationship to the risk of additional costs being incurred in that category. In total, the contingency pool included on Exhibit F represents a significant but not excessive percentage of the total project budget. The Commission finds that it is reasonable and prudent to include the contingencies proposed by the Company in the cost estimates for Units 2 and 3 as approved in this order.

In reaching this decision, the Commission has considered two arguments made by the South Carolina Energy Users. The first is the argument that S.C. Code Ann. § 58-33-270(B)(2) does not allow the Commission to establish a construction cost contingency pool. The statutory provision in question requires that the Commission establish "the anticipated components of capital costs and the anticipated schedule for incurring them, including contingencies." (Id.) The Commission finds that the plain meaning and grammatical structure of this statutory provision intends that contingencies be provided both for capital costs and for the schedule for incurring capital costs. In addition, cost contingencies are a standard and recognized feature of construction budgets. If such contingencies were not allowed under the Act, the Company would be required to seek an amendment to the base load review order for every change order, scope or design change, or mis-forecast of owner's cost or transmission cost during the life of the project. This is not a reasonable reading of the statute. Instead, the Commission reads the statute as authorizing the Company to include a reasonable capital cost contingency in its filings, for evaluation and approval by this Commission. There is no logical or policy reason to read the statute otherwise.

The second argument made by the Energy Users is that the Company double-counted inflation in calculating the amount of the contingency presented in Exhibit F. The Energy Users did not present any testimony concerning this point from its witness Mr. O'Donnell, but instead attempted to develop this point on cross examination of Ms. Best and Mr. Addison. (See generally, Tr. VII, p. 1738, l. 13 – p. 1741, l. 2; Tr. VI, p. 1204, l. 23 – p. 1207, l. 5.) Both denied any such double counting. (Tr. VII, p. 1740, l. 4

– p. 1741, l. 2; Tr. VII, p. 1741, l. 23; Tr. VI, p. 1206, l. 10 – p. 1207, l. 5.) Moreover, a review of Exhibit F establishes that the Company in fact allocated contingency amounts by year in 2007 dollars, and then escalated them to current year dollars only once. The Commission finds that the Company did not double escalate any contingency amounts.

5. Administration of the Construction Cost Contingency Pool

As Company witness Byrne points out, the timing of the use of contingencies is by definition unpredictable and may occur in one part of the project and not in others. (Tr. III, p. 622, l. 20 – p. 623, l. 4.) For that reason, the Company asked for the right to treat the total amount of contingency for the project as a single pool of funds such that it can allocate contingencies among categories and years as circumstances dictate. (Tr. III, p. 622, l. 8 – 11.) According to the Company, doing so would not change the overall cost of the project in 2007 dollars, but would allow for greater flexibility in administering the cumulative cash flow as issues arise in the construction process. As contingency amounts are moved from year to year, they would be adjusted to properly account for any applicable inflation related to them. (Tr. III, p. 622, l. 18 – p. 623, l. 4.)

We reject this proposal. We believe that the Company's proposal allows too much flexibility in the use of the funds. A better plan is to allow these amounts to be pooled on a prospective basis. In other words, the Company should be allowed to carry any unspent balance of its allocated yearly contingencies in Exhibit F from a current project year into the following years with appropriate inflation adjustments. Further, the Company is allowed to spend contingency amounts from future years sooner than anticipated on the schedule in Exhibit F, Chart A, provided that those contingencies are

associated with capital costs which are being accelerated up to 24 months ahead of schedule, as also allowed under this Order. We hold that these conditions balance the Company's need for flexibility with the accountability advocated by the intervenors.

6. Schedule Contingencies

The Base Load Review Act requires that the Commission establish contingencies to apply to the plant construction schedule approved under its terms. S.C. Code Ann. § 58-33-270(B)(1). In its application and testimony, the Company asked for a construction schedule contingency of 30 months that would apply to the substantial completion dates of each unit and to each of the milestones set forth on Exhibit E. These schedule contingencies reflect the fact that there are inevitable risks and uncertainties surrounding a construction project as complex as that envisioned here. As Company witness Byrne testified, SCE&G's most significant schedule risks concern the issuance of a COL which is a prerequisite to Westinghouse/Stone & Webster being able to proceed with nuclear safety-related construction. Other schedule concerns would involve major components being damaged in transit or their manufacturing being delayed for any number of reasons. Mr. Byrne testified that a delay of up to 30 months, while unlikely, is not inconceivable, and would not be likely to change SCE&G's commitment to complete the plant. (Tr. III, p. 623, l. 20 – p. 624, l. 3; Tr. III, p. 629, l. 7 – 13; Tr. III, p. 709 l. 1 – 9.) Given the full scope of the project, 30 months reflects a schedule contingency of approximately 20%.

As both Mr. Addison and Mr. Byrne testified, a reasonable schedule contingency allows SCE&G to assure the financial community that even a significant delay would not take away the assurances provided by the Base Load Review Act. Such assurances are a

valuable means of increasing investor confidence in the project, whether or not the schedule contingency is ever used. Furthermore, a longer schedule contingency does not undercut the Company's commitment regarding price. Regardless of how the schedule contingency may be used, the Company must still meet the financial target of completing the plant for $4,534,747,000 in 2007 dollars (net of AFUDC) to remain eligible to benefit from the Base Load Review Act's provisions.

ORS Witness Crisp stated that the schedule contingency should be limited to 15 months, and that SCE&G be required to receive ORS approval to extend it to 30 months if cost projections are not being met. However, Crisp also cited a number of possible reasonable scheduling contingency periods, including an 18 month alternative. Tr. IX, p. 2281, l. 13.

We hold that, for a project of this magnitude, a possible delay of 30 months is simply too long a period in the absence of Commission review of the circumstances surrounding the delay. The Company will have to seek approval of this Commission if it desires to delay its anticipated milestone schedule, or a component of its milestone schedule, by more than 18 months.

7. Capital Cost Rescheduling

The Base Load Review Act provides for the Commission to establish contingencies to apply to the schedule on which capital costs are incurred. In the Combined Application, the Company has requested that the order in this proceeding allow it to shift costs within Exhibit F to the Combined Application, by accelerating amounts listed there by up to 24 months, or by delaying amounts listed there by up to 30

months. As the Company's Witness Byrne testified, it may be possible to accelerate some or all aspects of construction of the Units if NRC licensing takes less time than expected, if weather and site conditions are more favorable than expected, or if other circumstances permit. It is in the interest of the Company and its customers to complete the Units as early as possible, and advancing elements of the schedule may allow this. However, without a schedule contingency allowing the amounts reflected in Exhibit F to be advanced, SCE&G could be in a position of exceeding the Cumulative Project Cash Flow because the project was ahead of schedule. (Tr. III, p. 624, l. 6 – 22.) For the reasons stated in the Combined Application and the testimony of Mr. Byrne, the Commission finds that the requested 24-month cost acceleration contingency is reasonable and should be granted.

The other aspect of the Company's request is that, consistent with the construction schedule contingency of 30 months, it be allowed a 30-month contingency to move portions of forecasted plant costs into the future where circumstances require. This delay contingency will allow the forecasted plant cost category expenditures as listed on Exhibit F to remain in step with the construction schedule as it evolves and will otherwise provide the Company with a means to insure investors that the protections of the Base Load Review Act will not be lost if delays push capital cost payments into the future. As mentioned above, such assurances are a valuable means of increasing investor confidence in the project whether or not they are ever used. Furthermore, the Company must still complete the plant for $4,534,747,000 in 2007 dollars (net of AFUDC) to remain eligible for revised rates under the Base Load Review Act. This Commission

finds, however, that in the absence of Commission review of the circumstances surrounding the delay, a 30-month capital cost rescheduling contingency is unreasonable and should be denied. For a project of this magnitude, the 30-month period is simply too long a period without Commission review.

We hold that an 18-month capital cost rescheduling contingency period, which is consistent with the construction schedule contingency period granted above, should be approved. The Company may therefore shift into the future any part of the funds contained within any of Plant Cost Categories or the Transmission Project cost categories listed on Exhibit F by up to 18 months, as circumstances indicate, consistent with the provisions of this Order. A shifting into the future of any part of the funds any further than 18 months will require the approval of this Commission.

C. Inflation Indices

The Base Load Review Act requires the Commission to establish inflation indices covering major cost components or groups of related cost components of the plants. The inflation indices used by the Company in preparing Exhibit F, and proposed for adjusting those capital costs during plant construction are set forth in Exhibit I. (Hearing Exhibit 16, EEB-2-P.) As set forth in Exhibit I, the project costs have been allocated into nine cost categories that are defined by risk profiles for each category. (Tr. VII, p. 1634, l. 17 – 19; Hearing Exhibit 16, EEB-2-P.) Three of these cost categories involve costs that are fixed or firm with contractually fixed rates of escalation. (Tr. VII, p. 1634, l. 19 – 21.) As to these items, there is no need for the Commission to specify a different inflation

index, since escalation is already included in the price, or will be included when the cost is billed using the contractually established escalation rate.

Company witness Best has testified concerning the inflation indices that the Company proposes to use in adjusting the other cost categories. In Exhibit I, Ms. Best has submitted the specific year-by-year values for each index as well as three, five and ten-year averages. Ms. Best testified that each of the indices is widely-accepted in the industry and is appropriate for use in escalating the particular category of cost to which it intended to apply. (Tr. IV, p. 923, l. 22 – p. 924, l. 3.) These indices are discussed separately below.

1. Handy-Whitman Indices

Five of the above-enumerated cost categories provide for the fixed or actual costs to be adjusted through application of various Handy-Whitman indices. (Exhibit I, pp. 2 – 3.) As testified to by Company witness Best, the Handy-Whitman indices are well-recognized and commonly used in the utility industry to estimate the cost of constructing facilities. (Tr. VII, p. 1639, l. 9 – 11.) According to Ms. Best, SCE&G has used these indices for decades and has determined that they are reliable and useful for estimating the cost of construction of utility facilities. (Tr. VII, p. 1639, l. 11 – 13.) Depending upon the category of costs, SCE&G has proposed the use of the Handy-Whitman All Steam Generation Plant Index, the All Steam & Nuclear Generation Plant Index, and the All Transmission Plant Index to determine the escalation amount relative to specified cost categories. (Hearing Exhibit 16, EEB-2, p. 2 – 3.) The Handy-Whitman indices also are broken down by region, and SCE&G is using the South Atlantic Region indices for

purposes of calculating the escalation adjustment in this proceeding. (*Id.*) ORS witness Crisp testified that Handy-Whitman is an industry standard for escalating construction costs and using the South Atlantic Region package assures that costs are reflective of regional economic considerations. (Tr. VIII, p. 1912, l. 1 – 4.)

The Handy-Whitman indices set forth in Exhibit I are indices that are targeted to the specific types of utility construction involved in this project as well as the region in which that construction will take place. For these reasons, the Commission finds the use of the Handy-Whitman inflation indices to be appropriate for use as proposed by the Company in Exhibit I.

2. Chained GDP Index

The Company has, for planning purposes, utilized the Gross Domestic Product Chained Price Index (GDP-CPI) to escalate owner's costs. This cost category includes SCE&G's internal labor cost associated with overseeing and managing the project as well as materials, insurance, overheads, and similar costs incurred directly by SCE&G. (Tr. VII, p. 1642, l. 7 – 11.)

The GDP-CPI is a commonly-used index of general escalation published by the U.S. government. (Tr. VII, p. 1642, l. 10 – 11.) The Commission finds the use of the GDP-CPI inflation index to be appropriate for use in escalating owner's costs in this project as proposed by the Company in Exhibit I.

3. EPC Fixed Adjustments

Within the EPC Contract, the Firm with Fixed Adjustment A and Firm with Fixed Adjustment B cost categories, are subject to escalation based upon fixed escalation

percentages. Firm with Fixed Adjustment A represents certain plant components specified in the EPC Contract. Firm with Fixed Adjustment B represents specific Westinghouse charges. (Tr. VII, p. 1637, l. 19 – 22.) These costs are escalated based on the escalation percentage specified in the EPC Contract. According to Company witness Best, the difference between these two categories regarding an inflation adjustment is that Firm with Fixed Adjustment B requires, in addition to the escalation percentage contained in Firm with Fixed Adjustment A, a modest additional amount intended to compensate Westinghouse for the additional anticipated cost of attracting and retaining qualified nuclear engineers and other nuclear specialists and for assuming the cost risks involved in the specifically nuclear aspects of this project. (Tr. VII, p. 1637, l. 22 – p. 1638, l. 6.) The Actual escalation percentages assigned to each of these risk categories are set forth in confidential version of Exhibit I. (Hearing Exhibit 16, EEB-2)

The Commission finds that these contractual fixed escalators reflect reasonable escalation percentages that are the result of extended negotiations between Westinghouse/Stone & Webster and SCE&G. These percentages will in fact be used to determine the charges that SCE&G will pay for costs incurred under the EPC Contract. As such, it is appropriate that the Commission allow them to be used in escalating the cost categories to which they pertain, as set forth in Exhibit F.

4. Administration of the Inflation Indices

In the Combined Application, and in the testimony of Company witness Best, the Company specified how it proposed to update the schedule of capital costs approved in

this order for changes in the inflation indices. Specifically, in the Combined Application the Company requested:

For past periods for which actual index information is available at the time SCE&G files its report, SCE&G proposes to use that actual index information in recalculating its capital cost projections;

For past periods for which actual index data is not yet available at the time SCE&G files its report, SCE&G proposes to use the average for the most recent 12-month period for which actual data is then available (the "Current 12-Month Data"). If Current 12 Month Data is used for any past period, that data will be updated in future reports when actual index information becomes available.

SCE&G also proposes to use Current 12-Month Data to update forecasts for the 12-month period that follows the close of each current reporting period.

For periods more than 12 months beyond the close of the current reporting period, SCE&G proposes to use the most current five-year average for the applicable inflation index.

In cases where out-of-period adjustments are made in index information, those adjustments will be reflected in the next report filed.

During construction of the Units, the Company will be required to calculate the escalation associated with actual payments made or cost incurred. The Company proposes to do this by converting the actual cost incurred to 2007 dollars using the appropriate escalation adjustment. It would then account for the base cost of the item and the associated escalation using the resulting figures. Such an adjustment will be required

for all costs except for Fixed with No Adjustment items where no escalation adjustment is required.

This approach to updating cost data is consistent with the approach used in forecasting the cost of the Units, as set forth in Exhibit F to the Combined Application. The Commission finds that this approach to updating the schedules of capital costs is reasonable and approves its use.

5. Conclusion as to Escalators

Based upon the foregoing, the Commission hereby establishes the cost escalators as specified in Exhibit I to be the escalators to be used by the Company for updating the forecasts of plant and transmission construction costs approved in this order. The Commission directs the Company to use those indices to update the forecasted costs in its quarterly reports to the ORS and the Commission using the protocols set forth above.

D. Return on Equity

Pursuant to the Base Load Review Act, the Commission is required to establish the return on equity related to the base load plant construction. For the purposes of the Combined Application, SCE&G is requesting that the 11.0% return on equity established in Order 2007-855-E apply to revised rates filings related to Units 2 and 3. (Tr. IV, p. 924, l. 12 – 15.) The Company has testified that it believes that, currently, a return on equity set at that 11.0% level will provide sufficient cash flow to support financing of the Units, and will meet investors' reasonable expectations of a return given the risks involved in base load construction. (Tr. IV, p. 924, l. 17 – 20.) The Commission finds

that the Company's request regarding return on equity is authorized under the Base Load Review Act, S.C. Code Ann. §§ 58-33-250, and 58-33-220(16), and is approved.

E. Rate Design/Class Allocation Factors

Pursuant to the Base Load Review Act, the Commission, in a base load review order, shall establish the rate design and class allocation factors to be used in calculating revised rates related to a base load plant. In establishing revised rates, all factors, allocations, and rate designs shall be as determined in the utility's last rate order or as otherwise previously established by the Commission, except that the additional revenue requirement to be collected through revised rates shall be allocated among customer classes based on the utility's South Carolina firm peak demand data from the prior year. S.C. Code Ann. § 58-33-270(D).

The Company's electric rates were last approved by the Commission in Order No. 2007-855. As required by the Base Load Review Act, in establishing the proposed revised rates, SCE&G has utilized the factors, allocations, and rate design used to establish revised rates approved by the Commission in the prior rate order. (Tr. XII, p. 2836, l. 1 – 3.)

In the Combined Application, the Company indicated a target revenue increase of $8,986,000. The ORS audit of the Company's application revealed that the Company had not allocated any of the proposed revenue requirements to its wholesale service. (Tr. IX, p. 2355, l. 5 – 8.) As indicated above, SCE&G's major wholesale customers are anticipated to leave the system in the near future, but those departures have not taken place yet. Taking the Company's wholesale jurisdiction into account, and based on the

Company's summer 2007 coincident peak, ORS proposed an allocation of the target revenue increase to retail and wholesale of 94.33% and 5.67%, respectively. (Tr. IX, p. 2355, l. 8 – 9.) ORS witness Mrs. Malini Gandhi testified that based on ORS's examination of the books and records of the Company, the total additional revenue requirement is $8,271,484, with a resulting retail service class revenue increase of $7,802,491. (Tr. IX, p. 2335, l. 19-22.) These amounts were calculated using total Company CWIP of $65,960,797, as reviewed and examined by ORS audit staff, through June 30, 2008. (Tr. IX, p. 2335, l. 7-8.) Applying the updated tax grossed up cost of capital of 12.54% supplied by Dr. Carlisle in Hearing Exhibit 26, Mrs. Gandhi determined the additional revenue requirement is $8,271,484. The application of the retail jurisdictional factor of 94.33% to the total Company revenue requirement of $8,271,484 results in an additional retail revenue requirement of $7,802,491. (Tr. IX, p. 2356, l. 1 – 3.) The Company reviewed the ORS recommendation and agreed that the allocation factors in its proposed rate increases should be adjusted to reflect an allocation of a part of the total revenue requirement to wholesale customers accordingly. (Tr. XII, p. 2844, l. 8 – p. 2845, l. 18.)[5] Based upon the ORS testimony, the Company modified Exhibit K to the Application (Hearing Exhibit 36) to reflect a recalculated retail revenue requirement of $7,800,664. (Tr. XII, p. 2846, l. 15 – 19.) [6] The Commission notes that these allocations may need to be reviewed and readjusted in future revised rates filings if wholesale customers depart the system as anticipated.

[5] A typographical error in the Court Reporter's transcript identifies these pages as pp. 2744 and 2745.

[6] A typographical error in the Court Reporter's transcript identifies this page as p. 2746.

As further required by the Base Load Review Act, the additional revenue requirement to be collected through revised rates has been allocated among customer classes based on the Company's South Carolina firm peak demand data from the prior year. For the purposes of allocating the proposed revised rates in this case, SCE&G utilized data from the summer peak for 2007. (Tr. IX, p. 2836, l. 3 – 7.) According to Company witness Jackson, the Summer 2007 peak demand occurred on August 10, 2007. (Tr. IX, p. 2836, l. 16.) Using this peak demand data, the relative percentages of retail demand allocation for the various classes, as reflected in Hearing Exhibit 35, KRJ-1, p. 1, are as follows: Residential Service is 48.10%; Small General Service is 17.98%; Medium General Service is 11.27%, and; Large General Service is 22.65%. (Tr. IX, p. 2836, l. 16 – 20.) The summer peak demand allocation methodology used by SCE&G to determine these percentages is the peak demand methodology historically used by the Commission in setting SCE&G's rates. (Tr. XII, p. 2836, l. 20 – 2837, l. 1.)

In reviewing the proposed rate design and class allocation factors, the Commission notes that the Company is not requesting to make any adjustment to the basic facilities or demand charges in the revised rates associated with this proceeding. (Tr. XII, p. 2839, l. 2 – 8.) The Company testified that it has been its practice over the last twenty years to adjust basic facilities charges for retail electric service in even increments, typically of $0.50 or more, and no such change is being requested in this proceeding. The Company reserved its right to adjust these charges in future proceedings if the indicated increase to any of these charges is $0.50 or more after rounding in $0.50 increments. (Tr. XII, p. 2839, l. 2 – 8.) The Company also seeks authorization to

increase demand charges in future revised rates filings when the size of the indicated increase in demand charges makes it reasonable to do so.

Based upon the evidence and testimony, the Commission adopts as just and reasonable and in the public interest, the rate design and class allocation factors proposed by the Company in this proceeding.

F. Revised Rates: Current Investment

Pursuant to the Base Load Review Act, the Commission shall specify in a Base Load Review Order, the initial revised rates, reflecting the utility's current investment in the plant. The proposed revised rates for each customer class were submitted in this proceeding in Hearing Exhibit 36. Under the proposed revised rates, the Residential class will have an average increase in rates of 0.43%, the Small General Service class will have an average increase in rates of 0.39%, the Medium General Service class will have an average increase in rates of 0.41%, and the Large General Service class will have an average increase in rates of 0.34%. (Hearing Exhibit 36).

The Commission adopts as just and reasonable and in the public interest, the proposed rates as submitted by the Company in Hearing Exhibit 36 in this proceeding and authorizes the use of these rates for bills rendered for retail electric service thirty (30) days following the issuance of this Order.

V. PROCEDURAL AND EVIDENTIARY MATTERS

During the course of the hearing several objections and motions were raised by various parties that were taken under advisement by this Commission. The Commission's rulings on those objections and motions are as follows:

First, during the public comment portion of this proceeding, the Company asked for a standing objection to the introduction of and reliance upon opinion testimony by lay witnesses regarding subject matters at issue in this proceeding that require special skill, knowledge, experience, and training. *See* South Carolina Rules of Evidence, Rule 702 (regarding expert testimony on issues of scientific, technical, or other specialized knowledge). The Company specifically raised concerns that lay witnesses would offer unqualified opinions regarding SCE&G's financial health and well-being, entitlement to rate recovery under the Base Load Review Act, the terms and provisions of the Base Load Review Act itself, the AP1000 units themselves, SCE&G's need for power, demand-side management programs, including energy efficiency and conservation, as well as rate recovery. (Tr. I, p. 13, l. 13 – p. 14, l. 14.) The Commission holds that this rule is permissive, in that it states that if expert testimony would be helpful in understanding a case, expert testimony may be offered. In our view, this rule does not bar opinion testimony by lay witnesses. Although expert testimony in the present case was clearly warranted, we believe that it was reasonable and prudent to hear the views of the public on topics related to the proposed construction of the new nuclear units. This Commission sits as a trier of fact, akin to a jury of experts. Hamm v. SCE&G, 309 S.C. 282, 422 S.E. 2d 110 (1992). The role of a jury is to weigh the evidence. South Carolina State Highway Department v. Townsend, 265 S.C. 253, 217 S.E. 2d 778 (1975). Accordingly, this Commission is entitled to hear testimony and give that testimony whatever weight it deems appropriate during the course of the hearing. We would note that some of the testimony objected to by the Company was actually favorable to the

Company's position. In any event, the Company's objection must be overruled.

Second, The Company objected to portions of the prefiled testimony of FOE Witness Brockway on the grounds that they contained recommendations that are contrary to the express language of the Base Load Review Act. (Tr. III, pg. 349, l. 18 – 21.) Specifically, the Company objected to recommendations found on page 9 at line 13 to page 10 at line 11, and page 48 at line 3 to page 49 at line 13. (Tr. III, pg. 353, l. 11 – 15.)

Ms. Brockway's testimony, in relevant part, contained two recommendations. In the first, Ms. Brockway recommended that the Commission rule that the Company assumes the risks that pertain to its choice of two nuclear generation facilities by ordering that no further adjustment to the approved schedule or budget for completion of the plant may be made on account of the risks determined by the Commission to have been inadequately considered by the Company. To the extent the Company makes changes to the schedule or the budget as the result of the occurrence of the factor found to pose such a risk, the Company may not seek an increase in rates or extension of depreciation or amortization to recovery any costs above those approved in this docket. (Tr. III, p. 366, l. 13 – p. 367, l. 3.) In the second, Ms. Brockway recommended that the Commission, if it were not inclined to deny the application outright, defer the consideration of any Base Load Review Act application pending (a) a return of the financial markets to solvency and stability, (b) a reassessment of the load forecast and financial analysis underlying the proposal in light of recent economic events, (c) an adequate assessment of the risks of the present proposal, (d) an adequate assessment of the opportunities for other means to meet

forecast proposal needs, and (e) a full opportunity for stakeholder involvement in the Commission's determination regarding any new proposal the Company may make to construct one or more large central-station nuclear generation plants and obtain pre-approval of any associated costs. (Tr. III, p. 405, l. 3 – 14.)

As to the first recommendation, counsel for the Company points out that the recommendation is contrary to Section 270(E) of the Base Load Review Act that provides: "As circumstances warrant, the utility may petition the Commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form a part of any Base Load Review order issued under this section." S.C. Code Ann. § 58-33-270(E). In addition, Company counsel also cites Section 58-33-270(B) that provides that a Base Load Review order shall establish the anticipated construction schedule for the plant, including contingencies; the capital costs and anticipated schedule for incurring them, including contingencies and inflation indices used for the utility for cost in plant construction. (*Id.* at 58-33-270(B).) The Base Load Review Act clearly contemplates a utility's ability to include contingencies in its schedule, recover capital costs related to the project, and seek modification of a Base Load Review Order, subject to approval by the Commission.

We do find that Ms. Brockway is entitled to make whatever recommendations that she sees fit, and this Commission will be the ultimate arbiter of whether the recommendations are contrary to the Act. In this case, the Commission does find that the recommendations are contrary to the Act and are not justified. However, the

Commission also finds, on factual and regulatory policy grounds, that Ms. Brockway's suggestions should remain in the record, as their inclusion in the record is not prejudicial to any party.

As to the second recommendation, the Company properly points out that the Base Load Review Act mandates a final determination and order on the part of the Commission within nine months of the filing of the application and that the Act does not provide a means whereby the Commission can defer judgment on an application. (Tr. III, p. 349, l. 22 – p. 350, l. 7.) Counsel for FOE argues that the Commission is authorized to reject an application as inadequate in certain respects and to send it back to the utility with a statement of its inadequacies. (Tr. III. p. 355, l. 1 – 13.) However, the Commission finds that the Act does not allow this Commission to defer judgment on an application as Ms. Brockway suggests.

Third, the Company has also objected to certain testimony offered on cross examination by Ms. Greenlaw's witness Dr. Wilder. At the hearing, Ms. Greenlaw sought to substitute an expanded version of Dr. Wilder's testimony for the direct testimony Dr. Wilder had prefiled in this docket. The Company objected to the admission of this expanded testimony on the grounds that it was not timely prefiled as required by the rules governing this proceeding.[7] The Company's objection was sustained. In response, counsel for FOE cross examined Dr. Wilder concerning the matters contained in the expanded testimony that was excluded, specifically matters related to the subject of demand-side management (DSM). The Company objected on the

[7] See S.C. Reg. 103-869. Dr. Wilder's additional testimony was marked for identification purposes only as Hearing Exhibit No. 10.

grounds that the subject matter was outside the admitted portions of Dr. Wilder's testimony and that, given the alignment of interest between Ms. Greenlaw and FOE, allowing FOE to elicit the excluded testimony through cross examination constituted an evasion of the prefiling requirements. (Tr. VI, p. 1292, l. 19 – p. 1293, l. 4.) FOE responded that the Commission's rules permit open cross examination of witnesses regarding matters that are otherwise relevant. (Tr. VI, p. 1295, l. 24 – p. 1296, l. 4.)

The Commission overrules the Company's objection. In general, the Commission allows broad cross examination. Although, it is clear from the record that FOE and Ms. Greenlaw agreed in many areas of this case, there is no showing of a true alignment of interests between the two parties. In addition, the Commission notes that this testimony was somewhat cumulative to testimony of other witnesses and in no way would its admission change the outcome of this proceeding. Therefore, it was not prejudicial to any party. We will still not admit the expanded written testimony, but the cross-examination shall remain in the record.

Fourth, the Company sought to include in the record of this preceding the affidavit of Mr. Fredrick P. Hughes, Consortium Project Director, Westinghouse Electric Company, LLC. The affidavit was offered by the Company in support of its position regarding the confidential treatment of Hearing Exhibit # 5. The Affidavit was submitted and marked for identification purposes as Hearing Exhibit # 15. Counsel for FOE objected to the admissibility of this affidavit on the grounds that it constituted inadmissible hearsay, that Mr. Hughes was not available for cross examination, and that it would be erroneous to accept any of the unchallenged, un-cross-examined assertions of